

## Update: Sexual Assault Benchbook

### CHAPTER 10

#### OTHER REMEDIES FOR VICTIMS OF SEXUAL ASSAULT

##### 10.3 Defenses to Civil Actions

###### E. The “Impairment” Defense

This subsection of the *Sexual Assault Benchbook* discusses the “impairment” defense in MCL 600.2955a, and includes discussion of a Court of Appeals case, *Piccalo v Nix*, 246 Mich App 27 (2001), which interprets this statutory defense.

The Michigan Supreme Court vacated the Court of Appeals’ opinion in *Piccalo* and remanded the case to the Court of Appeals for reconsideration in light of two previous Michigan Supreme Court opinions, one citing the proper rules of statutory construction, the other rejecting the so-called “absurd result” rule of statutory construction. *Piccalo v Nix*, 466 Mich 861 (2002). In addition, the Supreme Court ordered the Court of Appeals to determine whether there was sufficient evidence to show that plaintiff was 50% or more the cause of the accident or event that resulted in the injury. Upon remand, the Court of Appeals, on August 30, 2002, found that the defendant *was* entitled to the use of the impairment defense and affirmed the judgment of the trial court dismissing the case. *Piccalo v Nix*, \_\_\_\_ Mich App \_\_\_\_ (2002). As part of its analysis, the Court of Appeals began by defining the statutory term “event” through the use of a dictionary definition: “something that happens or is regarded as happening; an occurrence, especially one of some important [sic]” or “the outcome, issue, or result of anything.” The Court then held the following:

“Given this broad definition, there was evidence from which the jury could conclude that plaintiff was fifty percent, or more, the cause of the ‘event’ that resulted in the injury. Plaintiff, who was over eighteen years of age but under the legal drinking age of twenty-one, elected to consume alcohol and become intoxicated.

Plaintiff freely chose to accept a ride home from an intoxicated driver. Plaintiff also chose to ride in an automobile that did not have proper seating or restraints in the rear compartment and which was filled with unrestrained materials including a tire and several tools. Under these circumstances, defendant was entitled to the absolute defense of impairment, and the judgment of no cause of action must be affirmed.” *Id.* at \_\_\_\_.

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##### C. Post-Registration Change of Status

Effective October 1, 2002, 2002 PA 542 amended various provisions of the Sex Offenders Registration Act (SORA) to require individuals who are “required to be registered” and who also become a student, full- or part-time employee, contract provider, or volunteer with an institution of higher education to *report* their status in person to an applicable law enforcement agency having jurisdiction over that particular campus. These “campus reporting” amendments are reflected below.

##### 1. In-State Changes

Effective October 1, 2002, 2002 PA 542 amended MCL 28.725(1)(a) to include the requirement that an individual must notify law enforcement within 10 days of “any change required to be reported under section 4a [MCL 28.724a, governing campus reporting].” This language should be inserted following the language at the end of the first bullet on p 519 of the *Sexual Assault Benchbook*.

The following subparagraphs should be added as new subsection (3) of the *Sexual Assault Benchbook* on the bottom of p 519:

##### 3. Campus Reporting

Under MCL 28.724a(1)(a)-(f), an individual required to be registered under the SORA who is **not a resident** of this state must report his or her status in person to the local law enforcement agency or sheriff’s department having jurisdiction over a campus of an institution of higher education, or to a State Police post nearest to that campus, if any of the following occur:

“(a) Regardless of whether he or she is financially compensated or receives any governmental or educational benefit, the individual is or becomes a full- or part-time employee, contractual provider, or volunteer with that institution of higher education and his or her position will require that he or she be present on that campus for 14 or

more consecutive days or 30 or more total days in a calendar year,

“(b) The individual is or becomes an employee of a contractual provider described in subsection (a) and his or her position will require that he or she be present on that campus for 14 or more consecutive days or 30 or more total days in a calendar year.

“(c) The status described in subdivision (a) or (b) is discontinued.

“(d) The individual changes the campus on which he or she is an employee, a contractual provider, an employee or a contractual provider, or a volunteer as described in subdivision (a) or (b).

“(e) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.

“(f) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or another country for 14 or more consecutive days or 30 or more total days in a calendar year, or the individual discontinues his or her studies at that location.”

Under MCL 28.724a(2), an individual required to be registered under the SORA who is a **resident** of this state must report his or her status in person to the local law enforcement agency or sheriff’s department having jurisdiction where his or her new residence or domicile is located, or the State Police post nearest to the individual’s new residence or domicile, if any of the events described in MCL 28.724a(1) occur.

Under MCL 28.724a(3)(a)-(c), an individual required to report under MCL 28.724a(1)-(2) must make his or her report within the following time-frames:

- Not later than January 15, 2003, if the individual is registered under SORA before October 1, 2002.
- On the date he or she is required to register under SORA, if the individual is an employee, a contractual provider, an employee of a contractual provider, a volunteer on that campus, or a student on that campus on October 1, 2002.

- Except as provided in the two preceding subparagraphs, within ten days after the individual becomes an employee, a contractual provider, an employee of a contractual provider, or a volunteer on the campus, or discontinues that status, or changes location, or if he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the United States or another country.

Under MCL 28.724a(5), the applicable law enforcement agency must require the individual who reports to present written documentation substantiating all of the following:

- Employment status.
- Contractual relationship.
- Volunteer status.
- Student status.

Under MCL 28.724a(5), such “written documentation” may include, but need not be limited to, any of the following:

- A W-2 form, pay stub, or written statement by employer.
- A contract.
- A student identification card or student transcript.

An individual required to report under MCL 28.724a must also verify his or her registration quarterly or yearly, as required under MCL 28.725a(4)-(b). MCL 28.724a(4).

Under MCL 28.722(c)(i)-(ii), an “institution of higher education” means one or more of the following:

- A public or private community college, college, or university.
- A public or private trade, vocational, or occupational school.

As part of this new “campus reporting” legislation, 2002 PA 542 also renumbered the following statutory provisions:

- “Listed offense,” from MCL 28.722(d) to MCL 28.722(e);
- “Municipality,” from MCL 28.722(e) to MCL 28.722(f);
- “Residence,” from MCL 28.722(f) to MCL 28.722(g); and
- “Student,” from MCL 28.722(g) to MCL 28.722(h).

**Note:** 2002 PA 542 did not amend the definitions of the foregoing statutory terms.

## **D. The “Registration”**

### **1. Form and Contents**

Effective October 1, 2002, 2002 PA 542 added the following item to be contained on a SORA registration:

“Information that is required to be reported under section 4a [MCL 28.724a, governing campus reporting requirements].” MCL 28.727(1)(f).

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##### F. Yearly or Quarterly Verification of Domicile or Residence

Effective October 1, 2002, 2002 PA 542 amended MCL 28.725a(5) to require law enforcement officers to verify not only the registered individual's residence and domicile but also "any information required to be reported under section 4a [MCL 28.724a, governing campus reporting]."

##### 1. Yearly Verification ("Misdemeanor Listed Offenses")

Effective October 1, 2002, 2002 PA 542 amended the definition of "misdemeanor listed offense" under MCL 28.725a(4)(a) to include the following offense:

- Accosting, enticing or soliciting a child under 16 for immoral purpose if committed before June 1, 2002, MCL 750.145a.

**Note:** This statutory change was made to incorporate the Legislature's redesignation of MCL 750.145a from a misdemeanor to a felony, effective June 1, 2002. 2002 PA 45.

##### 2. Quarterly Verification ("Felony Listed Offenses")

Effective October 1, 2002, 2002 PA 542 amended the definition of "felony listed offense" under MCL 28.725a(4)(b) to include the following offense:

- Accosting, enticing or soliciting a child under 16 for immoral purpose if committed on or after June 1, 2002, MCL 750.145a.

**Note:** This statutory change was made to incorporate the Legislature's redesignation of MCL 750.145a from a misdemeanor to a felony, effective June 1, 2002. 2002 PA 45.

## **G. Public Notification and the Computerized Databases**

Effective October 1, 2002, 2002 PA 542 amended MCL 28.728(3)(b) to require additional information that must be contained within the computerized compilation. Thus, the following information should be inserted after the last bullet on p 524 of the *Sexual Assault Benchbook*:

- F** The name and campus location of each institution of higher education to which the individual is required to report under MCL 28.724a [governing campus reporting].

Furthermore, 2002 PA 542 renumbered the statutory citation containing the required contents of each computerized SORA registration from MCL 28.728(2) to MCL 28.728(3)(a). Accordingly, the statutory citation in the last sentence of the first paragraph under subsection (G) of the *Sexual Assault Benchbook* should be redesignated “MCL 28.728(3)(a).”



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##### **I. Confidentiality of Registration and Criminal Penalties for Disclosure of Non-Public Information**

Effective October 1, 2002, 2002 PA 542 amended MCL 28.730(1) to also protect as confidential any “report under section 4a [MCL 28.724a, governing campus reporting]” in addition to the registration.

Effective October 1, 2002, 2002 PA 542 amended the maximum penalties for an individual who violates MCL 28.730(4) (divulging, using, or publishing nonpublic information concerning registrations in violation of SORA) from 90 days and/or \$500.00 to **93 days and/or \$1,000.00**.

##### **J. National Reporting of Michigan Registrations**

Effective October 1, 2002, 2002 PA 542 added the following agencies that must receive SORA’s registration, notice, and verification information under MCL 28.727(8):

- F Sheriff’s departments; and
- F State Police posts.

##### **1. Public Inspection At Law Enforcement Agencies During Regular Business Hours**

Effective October 1, 2002, 2002 PA 542 added the following requirement under MCL 28.728(4):

“The [State Police] shall provide the ability to conduct a computerized search of the compilation based upon the name and campus location an institution of higher described in subsection (3)(b) [MCL 28.728(3)(b)].”

## **K. Registration Violation Enforcement; Venue and Penalties**

### **2. Penalties**

Effective October 1, 2002, 2002 PA 542 amended the maximum penalties for an individual who fails to comply with MCL 28.725a (yearly and quarterly verification) from 90 days or a maximum fine of \$500.00 to **93 days or a maximum fine of \$1,000.00**. MCL 28.729(2).

Effective October 1, 2002, 2002 PA 542 amended the maximum fine for an individual who willfully fails to sign a registration, notice, or verification as provided in MCL 28.727(4) (registration form) from \$500.00 to **\$1,000.00**. MCL 28.729(3).